

ATTORNEY DOCKET NO.
062986.0214
(1151.00)

PATENT APPLICATION
09/910,587

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Randal G. Martin, et al.
Serial No.: 09/910,587
Filing Date: July 20, 2001
Confirmation No.: 1407
Group Art Unit: 2616
Examiner: Feben M. Haile
Title: SYSTEM AND METHOD FOR ORDERING OF
DATA TRANSFERRED OVER MULTIPLE
CHANNELS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action issued January 9, 2008, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notices of July 12, 2005 and January 10, 2006. Pursuant to the Official Gazette Notices, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 1-18 currently stand rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not described in the specification. Claims 1-14 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Doshi, et al. in view of Forin and further in view of Larsen, et al. Claims 15-18 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Doshi, et al. in view of Jones, et al. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a prima facie case of obviousness. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of January 9, 2008 and the Final Action of October 9, 2007, the Examiner indicates that the specification does not show support for the claim language. It is clear from the specification that each generated packet is provided with a sequence number and that each generated packet is part of a block of data. Packets associated with a block of data are transported over a multiple number of channels. See page 5, line 30, to page 6, line 8, and page 6, line 20, to page 7, line 2, of Applicant's specification. As a result, a packet flow associated with a particular block of data can have its packets transported over a number of

channels. Therefore, the specification provides clear disclosure for the claimed invention.

The Examiner also indicates that Larsen, et al. teaches an ability to send first data on an available first channel and second data on a second channel when the first channel is not available. Contrary to the Examiner's position, the Larsen, et al. patent merely discloses an ability to select a data channel that is free of activity to allow a first station to communicate with a second station. See Col. 3, lines 13-18, of the Larsen, et al. patent. There is no disclosure cited by the Examiner in the Larsen, et al. patent that permits the first station to communicate with a second station using more than one data channel. Thus, the Examiner's extension of the Larsen, et al. patent to the features of the claimed invention is without merit.

The Examiner also indicates that the Jones, et al. patent suggests transmitting to a receiver packets bearing a credit for a particular virtual channel via a plurality of unique virtual channels. Contrary to the Examiner's position, the Jones, et al. patent merely discloses sending all of the data associated with a virtual channel credit over the same designated virtual channel. If the designated channel is not ready for data transmission, then the Jones, et al. patent discloses waiting until the designated channel is ready. See col. 4, lines 8-15, of the Jones, et al. patent. Therefore, the Jones, et al. patent is not capable of using multiple channels to send data associated with a particular packet flow as required by the claimed invention.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Action of October 9, 2007 to establish a prima facie case of obviousness of the claims in the Application rejected under 35 U.S.C. §103(a). There has been no mention of the three

criteria for a prima facie case of obviousness as spelled out in M.P.E.P. §2143. The Examiner has not cited any language from the prior art that would provide any indication to those of skill in the art that the Doshi, et al., Forin, Larsen, et al. and Jones, et al. patents could be combined with each other in any manner. The Examiner only provides a baseless subjective and conclusory "it would have been obvious" statement for combining the Doshi, et al. with the Forin and Larsen, et al., or Jones, et al., patents without providing any objective reasoning or citing any evidence of record to support such positions. The Examiner has also not provided any reasons how the proposed combination of references would have any expectation of success let alone a reasonable expectation of success.

As for teaching the claimed invention, there is recited in general an ability to send a first data packet of a particular packet flow over a first one of a plurality of channels selected according to the channel capacities of the plurality of channels and send a second data packet in the particular packet flow over a second one of the plurality of channels, different from the first one of the plurality of channels, as a result of the varying capacities of the plurality of channels. The Examiner readily admits that the Doshi, et al. patent fails to disclose an ability to generate data packets in packet flows in response to flow control credits. The Examiner readily admits that the proposed Doshi, et al. - Forin combination fails to disclose an ability to select a first one of a plurality of channels to transfer the first data packet according to channel capacities of the plurality of channels, transfer the first data packet over the selected first one of the plurality of channels, select a second one of a plurality of channels to transfer the second data packet according to channel capacities of the plurality

of channels, and transfer the second data packet of the particular packet flow over the selected second one of the plurality of channels wherein the second one of the plurality of channels is different than the first one of the plurality of channels as a result of varying channel capacities among the plurality of channels. The Examiner attempts to overcome the deficiencies of the Doshi, et al. and Forin patents by citing the Larsen, et al. patent in combination therewith. However, the Larsen, et al. patent merely discloses selecting a data channel that is free of activity to allow one station to communicate to another station. The Larsen, et al. patent explicitly discloses that a data channel is selected and communication continues on that data channel until all data has been transferred or the data timer for the data channel expires. As a result, there is no disclosure in the Larsen, et al. patent that different channels can be selected on a packet by packet basis. Thus, the portion of the Larsen, et al. patent cited by the Examiner fails to disclose any capability to send or receive a first packet of a particular packet flow on a first one of a plurality of channels and a second packet of the particular packet flow on a different one of the plurality channels as required by the claimed invention. Further, The Jones, et al. patent has no disclosure that data packets for a particular packet flow can be received over different virtual channels. The Jones, et al. patent only receives packets associated with a particular VCN over that VCN when a credit has been issued. Therefore, Applicant respectfully submits that Claims 1-18 are patentably distinct from the proposed Doshi, et al. - Forin - Larsen , et al. and Doshi, et al. - Jones, et al. combinations.

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CONCLUSION

Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in dark ink, appearing to read 'Charles S. Fish', is written over the printed name.

Charles S. Fish

Reg. No. 35,870

February 11, 2008

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